IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 66 OF 2007

SHRI. FRANCISCO ALBERTO FOURENCE DE CUNHA ... Petitioner

Versus

LEOPOLDINA PEREIRA E MENDONCA(DECEASED)THROUGH HIS LR'S AND ANR ... Respondents

Mr. M.S. Usgaonkar, Senior Advocate with Mr. I. Agha, Advocate for the Petitioner.
Mr. F.M. Reis, Advocate for Respondents No.1(f) & 1(g), 2.

Coram:- R. S. MOHITE, J.

Date:- 6th July, 2007

P.C.:

This petition impugns an order dated 5/01/2007 passed by District Judge, South Goa, Margao disallowing two applications under Order 41 Rule 27 of CPC. The two applications were at Exhibit 26 and 30.

2. I have perused both these applications and the documents sought to be produced. The first document which was sought to be produced alongwith the application dated 23/02/2006 was a letter addressed by the Inspector of Survey and Land Records to the present Petitioner. Obviously, this document ought to have been in custody of the Petitioner and the same could have been produced at the stage of suit if due diligence was exercised.

3. The second document is an information chart which shows the dates of publication of notice regarding preparation of Index of Lands at different stages as per the Land Revenue Code. In my view, both these documents which are sought to be produced in appeal, have no bearing on

the ultimate decision of the appeal. In the impugned order, Court has come to the conclusion that these documents are not necessary to be looked into under Order 47 Rule 27(b).

4. It was sought to be contended on behalf of the Petitioner that applications ought to have been decided at the stage of the final hearing of the appeal. Reliance is placed on the judgment of Apex Court in the case of State of Rajasthan V/s. T.N. Sahani and Ors. reported in (2001) 10 SCC 619. The ratio of the said judgment is not applicable in this case because I am informed that the appeal itself was on board for final hearing and it was at that stage that the applications under Order 41 Rule 27 were considered.

5. On behalf of the Respondents reliance is placed upon the judgment of the Apex Court in the case of Mahavir Singh V/s. Naresh Chandra reported in AIR 2001 SC 134, where the Apex Court laid down that the High Court ought not to have interfered in its exercise of power under Section 115 of CPC with an order of appellate Court rejecting permission to adduce additional evidence particularly when the whole appeal was not before the High Court that it was only in the circumstances when the appellate Court required such evidence to pronounce the judgment, that the necessity to adduce additional evidence would arise and not in any other circumstances.

6. The Petitioner has taken his chance before the appellate Court and having failed there, he cannot be allowed to say that appellate Court ought not to have decided his applications. As observed herein above, even otherwise, the documents are not necessary for deciding any of the issues arising in the appeal. Hence, the petition is rejected. Impugned stay stands vacated. Appeal is expedited.

R. S. MOHITE, J.

NH